

RESOLUTION NO. 2010-134

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH RELATING TO HARBOR CHARGES, SPECIFICALLY RATES AT THE BALBOA YACHT BASIN

WHEREAS, the City's tidelands trust, also known as the Beacon Bay Bill (Chapter 74 of the Statutes of 1978), dedicates certain tide and submerged lands ("Tidelands") to be held in trust by the City on behalf of the people of California; and

WHEREAS, the Beacon Bay Bill directs that the City manage these lands as follows:

- (1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.
- (2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.
- (3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area; and

WHEREAS, the City believes that effective management and conduct of a public harbor obligates it to charge appropriate and non-discriminatory rates for the use of tidelands, without conferring a benefit to private individuals for the use of public property in violation of the California Constitution's prohibition on gifts of public funds; and

WHEREAS, the City believes that there are at least two types of fees or charges in the Harbor – fees based on the cost of providing a service (such as processing a regional general permit) and charges based on the fair market value use of a public asset (such as some commercial pier charges, mooring charges, charges at the City-owned Balboa Yacht Basin ("BYB"), and more); and

WHEREAS, the City believes that various harbor activities should be set at or near fair market value to avoid granting or conveying Tidelands to any private party; and

WHEREAS, the City Council formed the Ad Hoc Committee on Harbor Charges ("Committee") on July 27, 2010 with the intent to have the Committee review harbor charges, including, but not limited to:

- Fees based on the cost of providing a service;
- Mooring rates – for shore moorings and offshore moorings;
- Balboa Yacht Basin charges – slips, garages, and apartments; and

- Commercial piers not already on leases.

WHEREAS, the Committee believes that rates at the BYB should be set at an amount consistent with Fair Market Value in Newport Harbor; and

WHEREAS, a loan from the California Department of Boating and Waterways for improvements at the BYB suggests that the City "review berthing charges ... serving same boating public ... (and) set rates at comparable levels for comparable facilities and services..."

WHEREAS, the Committee has held public meetings with BYB stakeholder groups and has made a proposal, revised following public input, to the City Council to increase rates at the BYB over a three period duration (starting with an increase in 2011 and ending in advance of the 2013 billing) to roughly an average of low- to moderately-priced berthing rates in Newport Harbor. To arrive at this number, the Committee reviewed:

- Rate data of other Newport Harbor Marinas, apartments, and garages provided by City Harbor Resources staff;
- Listings of amenities in other Newport Harbor marinas;
- Rate proposals or concepts offered by other groups, including tenants at the BYB; and
- Testimony offered in the public record at meetings associated with BYB rate increases.

Now, therefore be it:

RESOLVED by the City Council of the City of Newport Beach that the above recitals are true and correct and constitute findings that support the action taken herein; and be it also

RESOLVED that the City Council of the City of Newport Beach finds that the Fair Market Value of apartments, garages, slips, and side ties at the Balboa Yacht Basin are described within this Resolution and, for the slips and side ties, reflects an average of low- to moderately-priced marina slip rates in Newport Harbor with comparable amenities; and be it also

RESOLVED that City Council of the City of Newport Beach hereby amends the City's Master Fee Resolution to set the following charges for the Balboa Yacht Basin:

- 1) Beginning in March 2011, a month's rental of a slip or side tie at the BYB shall be set at the percentage of the Newport Harbor Marina Index rate as shown in Column A in the chart below.
- 2) Beginning in March 2012, a month's rental of a slip or side tie at the BYB shall be set at the percentage of the Newport Harbor Marina Index rate as shown in Column B in the chart below.
- 3) Beginning in March 2013, a month's rental of a slip or side tie at the BYB shall be set at the percentage of the Newport Harbor Marina Index rate as shown in Column C in the chart below.

Slip or Side Tie Length	Current BYB Rate is ___% of NH Index Rate	Column A 2011 Adjustment	Column B 2012 Adjustment	Column C 2013 Adjustment
30 - 39'	84%	89%	95%	100%
40 - 49'	64%	76%	88%	100%
50 - 59'	73%	82%	91%	100%
60 - 75'	58%	72%	86%	100%

(for example, in 2011, a 40' BYB would be set at 76% of the average Newport Harbor Marina Index rate for a 40' slip. That would adjust to being 88% of the NHMI rate in 2012)

- 4) That successive years' BYB slip and side tie rates be set at 100% of an average of the Newport Harbor Marina Index and that this shall be the rate-setting mechanism set forth in the Newport Beach Master Fee Resolution going forward from July 1, 2013; and
- 5) The rate charged shall be the greater of the slip or the boat. If the boat is longer than the slip it is in, the charge shall be based on the slip price plus the extra LF of the boat, at that same size slip rate.
- 6) Starting in March 2012, rentals for current tenants at all three apartments at the BYB shall be set at \$2,000/month. Starting in March 2013, rentals for current tenants at all three apartments at the BYB shall be set at \$2,250 per month.
- 7) If a new tenant rents an apartment at the BYB, that tenants' rate shall be set at \$2,500/month immediately.
- 8) From July 1, 2013 forward, apartment rentals at the BYB shall be adjusted once a year by the Consumer Price Index (LA-Orange-Riverside, All Urban Consumers).
- 9) Starting in March 2011, garage rentals at the BYB shall be set at \$262.50 per month. Starting in March 2012, garage rentals at the BYB shall be set at \$325.00 per month.
- 10) From July 1, 2012 forward, garage rentals at the BYB shall be adjusted once a year by the Consumer Price Index (LA-Orange-Riverside, All Urban Consumers).

RESOLVED by the City Council of the City of Newport Beach that it hereby directs that the Newport Harbor Marina Index for valuing BYB slips and side ties include the following marinas in 2010 and 2011, but that the City's Harbor Resources Manager or his or her designee may adjust or substitute the marinas within the Index in 2012 and beyond via posting the indexed marinas on the City's website, provided that the substitute marinas are considered low- or moderately-priced marinas in Newport Harbor:

- Ardell Marina
- Newport Dunes Marina
- Harbor Marina
- Lido Yacht Anchorage
- Port Calypso
- Swales Marina; and
- Bayside Village Marina

....and be it also


RESOLVED by the City Council of the City of Newport Beach that Harbor Resources staff is directed to monitor activities at the Balboa Yacht Basin to ensure that this Resolution's fee increases appropriately reflect market conditions. If in the opinion of the Harbor Resources Manager, the rate increases within this Resolution are, over time, not reflective of market conditions, the Manager shall bring this to the attention of the City Manager and City Council; and be it also

ADOPTED this 6th day of December, 2010.



KEITH D. CURRY
Mayor of Newport Beach

ATTEST:



LEILANI I. BROWN
City Clerk